IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2365 OF 1998.

Dena Bank, a body corporate constituted under the Banking Companies (Acquisition and transfer of Unddertakings) Act, 1970, having its Head Office at Maker Towers (E), Cuffe Parade, Bomnbay 400 005, and its Juhu Vile Parle Branch at Sharada Bhavan, V.M.Road, Bombay 400 056. ... Plaintiff.

Versus.

1. M/s.Vega Plast Pvt.Ltd., a Private Limited Company, incorporated under the Companies Act, 1956 and having its Regd. office at Krishna Kunj Apartment, Shamaldas Road, Near Lallubhai Park, Andheri (W), Bombay 400 058.

2. Vijay Ramkrishnan, of Bombay Indian Inhabitant residing at B-8 Mahindranagar, Haji Bapu Road, Malad (East), Bombay 400 097.

3. Varghese Jacob of Bombay, Indian Inhabitant residing at C/o. M/s.Ciccus Logic Information Technologies Pvt.Ltd. Krishna Kunj Apartment, Shamaldas Road, Near Lallubhai Park, Andheri (West), Mumbai 400 058. ... Defendants.

Shri Bali i/by M/s.Thakker & Bali for the Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 26th July, 2007.

ORAL JUDGMENT.:

1. Suit is kept under the caption of Undefended Suits for Exparte Decree. The learned Counsel appearing for the Plaintiff has tendered on record an affidavit in

lieu of evidence of Shri Bahadur N.Kapadia, an Officer of the Plaintiff working with its Juhu Vileparle Branch, Mumbai. The affidavit is marked "X" for identification and the same is taken on record. The learned Counsel for the Plaintiff has also tendered on record 12 original documents in the form of a compilation. The compilation is marked "Y" (Collectively) for identification and the same is taken on record.

2. According to the case of the Plaintiff the 1st Defendant which is a private limited company was granted cash credit facility in the sum of Rs.2 lakhs on or about 3rd April 1995. According to the case of the Plaintiff, the 2nd and 3rd Defendants who are the Directors of the 1st Defendant executed a letter of guarantee dated 6th April 1995 whereby they guaranteed repayment of the amount due and payable by the 1st Defendant. On 10th July 1995, the Plaintiffs on the request made by the 1st Defendant granted in favour of the 1st Defendant a sub-limit for Rs.50,000/- against hypothecation of book debts in the said cash credit hypothecation facility against execution of the various documents. In respect of the said credit facility, the 2nd and 3rd Defendants executed another letter of guarantee dated 14th August 1995 in favour of the Plaintiffs.

3. The claim of the Plaintiff has been proved by the affidavit of Shri Bahadur N.Kapadia. The prayer in the suit is for recovery of the amount due and payable under the said Credit facilities granted to the 1st Defendant. The original documents such as demand promissory note, letter of continuity, agreement of hypothecation of goods, agreement of hypothecation of moveables, letter of guarantee executed on 6th April 1995 are placed on record. Similarly demand promissory note, letter of continuity, agreement of hypothecation of book debts and letter of guarantee executed by the Defendants on 14th August 1995 are also placed on record. The execution of the said documents has been duly proved by the said Affidavit of Shri Bahadur N.Kapadia. The Plaintiffs have also produced a certified true extract of the account of the 1st Defendant. The said extract is also proved by the said affidavit.

4. In the plaint the claim made by the Plaintiff is in the sum of Rs.2,56,654/- being the outstanding amount under the cash credit facility against hypothecation of stocks and against hypothecation of book debts. In view of the agreed rate of interest, the Plaintiff has prayed for interest at the rate of 16% per annum.

5. In the affidavit of Shri Bahadur N.Kapadia, the

Plaintiff has restricted its claim to the sum of Rs.2,47,070.90 with further interest thereon at the rate of 16% per annum.

6. There is no contest by the Defendants. Considering the affidavit in lieu of evidence and the documents filed on record, the Plaintiff is entitled to a decree in terms of prayer clauses (a), (b), (c) and (g) subject to modification that the decretal amount would be Rs.2,47,070.90 with interest thereon at the rate of 16% per annum from the date of institution of the suit till realisation or payment. The Plaintiff will be entitled to refund of Court fee, if any, as per the Rules.

7. Certified copy is expedited.

Judge.